

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

JAMES J. LEWIS,	)	KVC
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 10742-15 L.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	
	)	
	)	
	)	
	)	
	)	

**ORDER**

This is a collection review case involving a proposed levy. Respondent filed a Motion For Summary Judgment on October 1, 2015, together with a supporting declaration. Petitioner filed a Response on October 27, 2015, objecting to the granting of the motion. By Order of the Chief Judge dated January 4, 2016, respondent's motion was assigned to the undersigned for disposition.

The Court will deny respondent's motion for the following reasons. First, in the absence of a Form 4340 or an equivalent certified transcript of account, respondent has failed to demonstrate that there is any outstanding liability that would justify the issuance of a levy. But assuming that there is a liability, then in the absence of any transcript respondent has failed to demonstrate what that liability relates to. Thus, respondent's reliance on I.R.C. section 6330(c)(2)(B) to preclude any challenge to the existence or amount of the underlying liability is not supported.

Second, in his request for an administrative hearing petitioner expressed a desire for, inter alia, a collection alternative based on inability to pay. In support of such collection alternative petitioner submitted Form 433-A, Collection Information Statement. The Form 433-A was considered by a settlement officer to

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be sufficient to entitle petitioner to a face-to-face hearing rather than a correspondence hearing (and a face-to-face hearing was in fact conducted). Notably the Form 433-A, as completed and certified by petitioner under penalties of perjury, shows monthly living expenses in excess of monthly income. The settlement officer concluded, however, that “info shows taxpayer’s ability to meet necessary living expenses and make payment towards past due amount(s)”, yet the record reveals no reasoned analysis to support such conclusion. Under these circumstances it cannot be said that respondent has demonstrated that no genuine issue or dispute as to material fact exists in this case and that a decision may be rendered as a matter of law.

Premises considered, it is hereby

ORDERED that respondent’s Motion For Summary Judgment, filed October 1, 2015, is denied.

**(Signed) Robert N. Armen, Jr.**  
**Special Trial Judge**

Dated: Washington, D.C.  
January 7, 2016